



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2012-0761; FRL- 9907-11-Region-8]

#### **Approval and Promulgation of State Implementation Plan Revisions; Revisions to the Air Pollution Control Rules; North Dakota**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of North Dakota on April 14, 2011. The revisions affect North Dakota's air pollution control rules regarding general provisions, ambient air quality standards (sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>x</sub>), and lead), and permitting. EPA acted separately on other provisions in the April 14, 2011 submittal related to North Dakota's regulation of greenhouse gases (GHGs) under its Prevention of Significant Deterioration (PSD) program. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0761, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: [Fallon.Gail@epa.gov](mailto:Fallon.Gail@epa.gov).

- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you are faxing comments).
- Mail: Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2012-0761.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gail Fallon, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6281, [Fallon.Gail@epa.gov](mailto:Fallon.Gail@epa.gov).

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## **Definitions**

For the purpose of this document, the following definitions apply:

- (i) The words or initials Act or CAA mean or refer to the Federal Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials GHG mean or refer to greenhouse gases.
- (iv) The initials NAAQS mean or refer to the National Ambient Air Quality Standards.
- (v) The initials NDAC mean or refer to North Dakota Administrative Code
- (vi) The initials NDDH mean or refer to the North Dakota Department of Health.
- (vii) The initials NESHAP mean or refer to National Emissions Standards for Hazardous Air Pollutants.
- (viii) The initials NO<sub>x</sub> mean or refer to nitrogen oxides.
- (ix) The initials NSPS mean or refer to New Source Performance Standards.
- (x) The initials NSR mean or refer to New Source Review.
- (xi) The initials PM<sub>2.5</sub> mean or refer to fine particulate matter.
- (xii) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (xiii) The initials SAAQS mean or refer to State Ambient Air Quality Standards.
- (xiv) The initials SIP mean or refer to State Implementation Plan.

(xv) The initials SO<sub>2</sub> mean or refer to sulfur dioxide.

(xvi) The words State or ND mean the State of North Dakota, unless the context indicates otherwise.

## **I. General Information**

### **A. What Should I Consider as I Prepare My Comments for EPA?**

1. *Submitting CBI.* Do not submit this information to EPA through <http://regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

### **2. *Tips for Preparing Your Comments.*** When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.

- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

## **II. Background**

The Act requires states to follow certain procedures in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan must be adopted after reasonable notice and public hearing.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing notice, held a public hearing on August 19, 2010 to consider the revisions to its Air Pollution Control Rules. Following the public hearing, comment period, and legal review by the North Dakota Attorney General's Office, NDDH adopted the revisions. The revisions to the Air Pollution Control Rules became effective on April 1, 2011. The North Dakota Governor submitted the SIP revisions to us with a letter dated April 14, 2011.

## **III. Analysis of SIP Revisions**

We are proposing action on the April 14, 2011 submittal for SIP revisions that involve the following chapters of the North Dakota Administrative Code (NDAC): 33-15-01, "General Provisions;" 33-15-02, "Ambient Air Quality Standards;" and 33-15-14, "Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V permit to Operate." We previously acted on the revisions to NDAC 33-15-15, "Prevention of Significant

Deterioration of Air Quality” in the April 14, 2011 submittal regarding regulation of GHGs and fine particulate matter (PM<sub>2.5</sub>) under North Dakota’s PSD program in 2012 (77 FR 64734, October 23, 2012). The following is our description and analysis of the revisions in this proposed action which the State submitted to us for approval.

A. Chapter 33-15-01, NDAC, General Provisions

The State revised section 33-15-01-04.52 and cross-referenced and incorporated by reference the version of 40 CFR 51.100(s) as it existed on July 2, 2010 for purposes of defining “volatile organic compounds” (the prior date used was March 1, 2008). This change is minor and is consistent with relevant CAA and regulatory requirements.

B. Chapter 33-15-02, NDAC, Ambient Air Quality Standards

In section 33-15-02-04.1, “Particulates and Gases,” the State deleted the language, “Except as provided in section 33-15-02-07...” at EPA’s request. We were concerned that the cross reference to subsection 33-15-02-07.4 in 33-15-02-07, “Concentrations of Air Contaminants in the Ambient Air Restricted,” gave discretion to the state director to exempt, from ambient air quality standards, emissions during malfunctions and maintenance shutdowns. We asked the State to address our concern. The deletion of subsection 33-15-02-07.4 from 33-15-02-07 and the deletion of the language cross referencing to it in subsections 33-15-02-04.1, 33-15-02-07.1 and 33-15-02-07.2 addresses our concern and is consistent with CAA requirements.

In section 33-15-02-07, “Concentrations of Air Contaminants in the Ambient Air Restricted,” the State deleted subsection 33-15-02-07.3 and the cross references to this subsection in 33-15-02-07.1 and 33-15-02-07.2. Prior to this revision, there was a 1-hour state ambient air quality standard (SAAQS) for SO<sub>2</sub> of 273 parts per billion (ppb). There was no 1-

hour SO<sub>2</sub> national ambient air quality standard (NAAQS) at that time. Because there were both a 24-hour and annual SAAQS and NAAQS for SO<sub>2</sub>, coal conversion facilities and petroleum refineries were exempt from the SAAQS per North Dakota Century Code (NDCC) 23-25-03.2. North Dakota NDAC 33-15-02-07.3 clarified that these source categories only had to meet the NAAQS. The State's rule revision eliminated the 1-hour SAAQS for SO<sub>2</sub> and adopted the 1-hour NAAQS (75 ppb). The revision makes the SO<sub>2</sub> SAAQS and the NAAQS the same; NDAC 33-15-02-07.3 is thus unnecessary. This revision is consistent with CAA and regulatory requirements.

Also in section 33-15-02-07, Tables 1 and 2 were revised. Table 1, "Ambient Air Quality Standards," that lists the State ambient air quality standards was revised to add the new 2010 federal 1-hour standards for NO<sub>x</sub> and SO<sub>2</sub> and to amend the standard for lead to the 2008 federal standard. Table 2, "National Ambient Air Quality Standards," includes the old federal standards for SO<sub>2</sub>. The State initially proposed that Table 2 be deleted and that the new federal SO<sub>2</sub> standards be incorporated into Table 1. We asked the State to retain the old federal SO<sub>2</sub> standards for one year after designation of the new standard.<sup>1</sup> The State addressed our concerns by retaining the old primary SO<sub>2</sub> standards in Table 2, by adding the new primary SO<sub>2</sub> standards to Table 1, and by moving the secondary SO<sub>2</sub> standard from Table 2 to Table 1. The State added an explanation after Table 2 regarding the federal requirement to retain the standards for one year after designation. These revisions were made to reflect the federal standards and are consistent with CAA and regulatory requirements.

#### C. Chapter 33-15-14, NDAC, Designated Air Contaminant Sources, Permit to

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<sup>1</sup> Per revised 40 CFR 50.4, effective August 23, 2010 (75 FR 35520, June 22, 2010), "[t]he SO<sub>2</sub> NAAQS set forth in this section will no longer apply to an area one year after the effective date of the designation of that area, pursuant to section 107 of the Clean Air Act, for SO<sub>2</sub> NAAQS set forth in §50.17..."



## Construct, Minor Source Permit to Operate, Title V Permit to Operate

In Chapter 33-15-14, in addition to several housekeeping revisions, the State made revisions to sections 33-15-14-01 and 33-15-14-02 with the intent to change the permitting requirement for sources subject to a new source performance standard (NSPS) or national emission standard for hazardous air pollutant (NESHAP). Previously, the SIP-approved minor source permit rule required any source subject to a NSPS or NESHAP to obtain a permit from the State regardless of the quantity of source emissions. The State has changed the rule so the permit requirement only applies to sources subject to a state-adopted NSPS or NESHAP. The State made this change to avoid the burden of permitting the numerous oil and gas facilities that became subject to the newly promulgated federal NSPS at 40 CFR part 60, subpart OOOO (Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution). The effect of these revisions is the State, by not adopting subpart OOOO into state law (and with no intention to adopt it in the future) will not have to permit the sources subject to subpart OOOO. Coupled with an existing exemption for oil and gas production operations at subsection 33-15-14-02.13.o and the State's oil and gas registration program at Chapter 33-15-20, the sources the State intends to exclude from permitting include the multitude of small units, such as tanks, engines, and other oil and gas production related units normally subject to the State's minor source New Source Review (NSR) program. State permitting requirements aside, national emissions standards in any NSPS or NESHAP including 40 CFR part 60, subpart OOOO still apply to the subject sources. The revisions related to NSPS and NESHAP permitting result in a relaxation of North Dakota's SIP since now a narrower subset of sources subject to NSPS and NESHAP requirements (only those sources subject to NSPS and NESHAP requirements that are adopted by the State) are subject to permitting. While the State has not

indicated any intention to return delegation of any currently state-adopted NSPS or NESHAP requirements, EPA has considered this possibility. Regarding the potential impacts to any future relaxation related to such returned delegation, should this occur, EPA will continue to work closely with the State to review these requirements as well as the rest of its minor NSR program. Like other states, EPA has some concerns with the stringency of North Dakota's minor NSR program, and we acknowledge that there are ongoing discussions with North Dakota to clarify and strengthen the State's minor NSR program including addressing oil and gas production. North Dakota approached this current SIP revision in a prospective manner, revising its rules prior to EPA issuing the subpart OOOO requirements.

CAA section 110(l) requires a demonstration that a SIP revision does not interfere with any requirement concerning attainment and that a relaxation is sufficiently protective of air quality and other CAA requirements in order for EPA to approve the relaxation. EPA conducted such a demonstration for the permitting rule revision in the April 2011 submittal finding the revisions are not presently interfering with the State's SIP control strategy or causing NAAQS violations in North Dakota. Our demonstration is included in the docket for this action.

The specific revisions related to the minor source NSPS and NESHAP permitting issue as well as other revisions to the minor source NSR program are described below.

In section 33-15-14-01, "Designated Air Contaminant Sources," the State revised the list of sources "capable of causing or contributing to air pollution." The revised sections read as follows:

33-15-14-01.9. Any source for which an applicable federal standard of performance (40 CFR 60) has been adopted in chapter 33-15-12.

33-15-14-01.10. Any source for which an applicable national emission

standard for hazardous air pollutants (40 CFR 61) has been adopted in chapter 33-15-13.

In section 33-15-14-02, “Permit to construct,” the State made the following revisions:

In subsection 33-15-14-02.1, “Permit to construct required,” the State deleted the following language from the end of the first paragraph, “This requirement shall also apply to any source for which a federal standard of performance has been promulgated prior to such filing of an application for a permit to construct. A list of sources for which a federal standard has been promulgated, and the standards which apply to such sources, must be available at the department’s offices.” The subsection now reads, “No construction, installation or establishment of a new stationary source within a source category designated in section 33-15-14-01 may be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter.”

In subsection 33-15-14-02.13, “Exemptions,” the State deleted the following language from the end of the introductory sentence, “and there is no applicable new source performance standard, or national emission standard for hazardous air pollutants.” This subsection now reads, “A permit to construct is not required for the following stationary sources provided there is no federal requirement for a permit or approval for construction or operation.”

In subsection 33-15-14-02.13.o, the State made a revision deleting an unnecessary subsection reference for the definition of major source which we are

approving. The subsection now reads, “Oil and gas production facilities as defined in chapter 33-15-20 which are not a major source as defined in section 33-15-14-06.” The State is moving towards less precise numbering references, in some cases, to simplify any future rule renumbering requirements. In addition, under this provision, oil and gas production facilities that are not major sources are exempted from review and permitting. While EPA approved this provision in 1995, we do have concerns now that the provision may need to be strengthened in order to conform with the CAA and EPA’s minor NSR regulations 40 CFR 51.150-51.164. EPA has not reviewed the substance of this rule as part of this action. The EPA is now merely approving the deletion of the numbering cross reference submitted by the State. The current version of the NDAC rule does not contain substantive changes from the prior codification that we approved into the SIP. EPA acknowledges that there are ongoing discussions with North Dakota to address EPA’s concerns with the rule language that EPA previously approved into the North Dakota SIP. In a December 10, 2013 letter from Terry O’Clair, Director of North Dakota’s Division of Air Quality to Gail Fallon, EPA Region 8, North Dakota committed to provide clarification of the applicability of the oil and gas production operations registration program and guidance. Because this rule revision in the SIP only deletes a numbering cross reference, we are proposing to approve this revision

Also in Chapter 33-15-14, the State made several housekeeping revisions. A revision in subsection 1.12 is clarifying in nature and replaced language about a source’s emissions “affecting” state air quality with language regarding a source that the State determined to “cause

or contribute to a violation” of air quality standards. A revision in subsection 1.15 added the word “stationary” to clarify the State’s intent to regulate only stationary sources under its permitting program.<sup>2</sup> The revised subsections read as follows:

33-15-14-01.12. Any source which is determined by the department to cause or contribute to a violation of any SAAQS or violates the other provisions of chapter 33-15-02.

33-15-14-01.15. Other stationary sources subject to a standard or requirement under the Federal Clean Air Act as amended.

In section 33-15-14-03, “Minor source permit to operate,” the State deleted exception language in subsection 33-15-14-03.1.c related to the requirement for a minor source permit to operate when a source is transitioning to a title V permit to operate as well as language for fees related to such sources that meet the title V applicability requirements. The subsection now reads, “Sources that are subject to the title V permitting requirements of section 33-15-14-06 are exempt from the requirements of this section.” While the time frame related to the State issuing initial title V permits has largely passed, in the event a minor source’s emissions grow to the extent that a title V permit becomes necessary, any applicable requirements in the minor source permit to operate will transition into the title V permit to operate. In such a case, until a title V permit is issued, the minor source permit remains in effect.

The changes in Chapter 33-15-14 only affect the applicability of certain permitting requirements contained in this Chapter. These changes do not affect emission limits in the SIP

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<sup>2</sup>We acted previously on other revisions in the April 14, 2011 submittal, pertaining to the State’s regulation of greenhouse gases. Federal greenhouse gas requirements deal largely with mobile sources. See our 2012 action, 77 FR 64734, October 23, 2012, for a more detailed explanation.

or other requirements that would affect ambient concentrations of criteria pollutants. These changes are consistent with CAA and regulatory requirements.

#### **IV. Proposed Action**

EPA is proposing to approve revisions to the North Dakota SIP that the Governor of North Dakota submitted with a letter dated April 14, 2011 and that were state-effective April 1, 2011. Specifically, EPA is proposing to approve North Dakota's revisions to the following portions of the North Dakota Administrative Code: Chapter 33-15-01, "General Provisions," section 33-15-01-04.52 ; Chapter 33-15-02, "Ambient Air Quality Standards," sections 33-15-02-04.1, 33-15-02-07.1, 33-15-02-07.2, 33-15-02-07.3, 33-15-02-07.4, section 33-15-02, Tables 1 and 2. EPA is proposing to approve Chapter 33-15-14, "Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate," sections 33-15-14-01.9, 33-15-14-01.10, 33-15-14-01.12, 33-15-14-01.15, 33-15-14-02.1, 33-15-14-02.13, 33-15-14-02.13.o, 33-15-14-03.1c with the understanding that the State and EPA will continue discussions to clarify and strengthen the State's current minor source program as it relates to oil and gas production facilities. See section III of this action for a description of these revisions. EPA acted previously on the revisions to Chapter 33-15-15, "Prevention of Significant Deterioration of Air Quality," that were also included in the April 14, 2011 submittal. See 77 FR 64734, October 23, 2012.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state

law as meeting federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- does not provide EPA with the discretionary authority to address, as appropriate,

disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 14, 2014.

Howard M. Cantor,  
Acting Regional Administrator,  
Region 8.



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